

**MINUTES
REGULAR MEETING
RETIREMENT BOARD OF TRUSTEES
EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BATON ROUGE
AND PARISH OF EAST BATON ROUGE
OCTOBER 28, 2021**

The regular meeting of the Retirement Board of Trustees was held in the Metropolitan Council Chambers at 222 St. Louis Street, and was called to order at 10:01 a.m. by Board Chairman Ms. Marsha Hanlon. Members present: Mr. Brian Bernard, Mr. David West, Chief Britt Hines, Lieutenant Matt Johnson, and Mr. J. Daniels. Absent: Mr. Mark LeBlanc. Staff present: Mr. Jeffrey Yates, Mr. Mark Williams, and Mr. Kyle Drago. Others present: Ms. Denise Akers – legal counsel, Mr. John Williams – Mayor's Office, Mr. Joe Toups – Council Budget Office, Ms. Sharon Campbell, Ms. Debbie McClure, Ms. Kathleen Kreko, and Ms. Linda Hunt – Finance Department, Mr. Pat Guidry – IS, and Mr. Cary Cashio – DPW.

Mr. Drago formally called the roll.

The chairman began by introducing Item 1, Reading and Approval of Minutes, and noted that there were minutes being considered for approval from the regular meeting of September 23, 2021, and from the special meeting of October 13, 2021, and called for a motion. Mr. West noted that in the September 23, 2021 minutes there was a notation on page 4 indicating a motion made by Chief Hines with a second by an unknown Board member, and that it was he who had seconded the motion.

Motion by Mr. Bernard, seconded by Mr. West to suspend the reading of, and approve the minutes of the regular meeting of September 23, 2021, with the amendment noted by Mr. West, and of the special meeting of October 13, 2021 as presented.

No discussion and no objections.

Motion passed by those members present.

There were no items to address under Item 2, Disability.

The next item on the agenda was Item 3, Benefits Report, and the chairman called on Mr. Yates to present the report. Mr. Yates stated that there was nothing unusual on the report, and that the report was in order as presented.

Motion by Mr. West, seconded by Mr. Bernard to approve the Benefits Report as presented.

No discussion and no objections.

Motion passed by those members present.

The next item on the agenda was Item 4, DROP Notifications Report, and it was noted that this report was provided for informational purposes only, and no action was necessary.

The chairman then moved to Item 5, Consultants' Reports, and under Item 5A, Status on Pending Legal Matters, recognized Ms. Akers for her legal update report. Ms. Akers stated she had one item that needed to be addressed in executive session, and that it could be taken up at the end of the meeting. She then outlined the status of each of the securities litigation matters outstanding, and noted that the most recent changes were highlighted in yellow. In the MacroGenics suit there was Board action needed that would be addressed in executive session. In the GreenSky litigation she noted that the notice of settlement had been sent out, and that we are still waiting on the final approval hearing and the judge's signature. Regarding the Impinj case, she stated that the court had granted the motion to distribute the settlement proceeds, and that CPERS was still waiting to receive its pro-rata share of the proceeds in the next month or so. In the Energy Transfer case, the discovery stage was continuing, with Mr. Yates providing documentation requested by the attorneys. January 13, 2022 is the deadline for the defendants to oppose class certification, with discovery expected to conclude in August of 2022. In the Merritt Medical case, Ms. Akers stated that a motion to oppose class certification is due February 13, 2022, with discovery scheduled to conclude in July of 2022 and trial set for October 11, 2022. She stated that two of these cases would be discussed in executive session near the end of the meeting.

Regarding the advertisement for the Retirement Administrator position, Ms. Akers stated that at the last Board meeting, the Board authorized her to make an offer of employment to Mr. James Mack at the current pay range of 2320. She noted that he was very interested in the job position, but had been expecting more on the salary side. She stated that the salary increase to pay range 2340, plus the allotment change was scheduled for action with the Metro Council but got delayed due to bad weather, and was now scheduled for the November 4th Council meeting. She had been told that if the Board could make the job offer at pay range 2340, with the promise of pursuing pay range 2360 through the Mayor's budget process that Mr. Mack would accept the offer. However, the delay in the Council meeting pushed back the ability to make that offer. Ms. Akers recommended that the Board pass a motion to continue to seek the pay range increase to 2340 from the Metro Council, and that Mr. John Williams had told her the Mayor would submit an

additional increase to pay range 2360 in her budget for calendar year 2022. In answer to a question from Mr. Yates, Ms. Akers confirmed that Mr. Mack knows that he would be appointed at the top step of his pay range with no room to increase unless there are across the board increases in the future. Once the Council passes the pay grade increase, Ms. Akers, as pre-instructed by the Board, could make the offer to Mr. Mack at \$123,000+, along with an automobile allowance, and asking the Mayor to increase the Retirement Administrator pay range to 2360 in the 2022 budget process.

Motion by Ms. Hanlon, seconded by Mr. Daniels to extend a job offer to Mr. James Mack if the Metro Council approves the pay grade increase to 2340, with a further pay grade increase to 2360 through the budget process, contingent on Mr. Mack passing a drug screen and a physical examination.

No discussion and no objections.

Motion passed by those members present.

Ms. Akers continued with her report and led into the draft of the Retirement Ordinance changes, and noted that she and Mr. Yates had heard different things regarding the Board motions made back in July for the return-to-work retirees. She noted that the Board had the original edited summary document, copy of the ordinance language changes, and Mr. Yates' synopsis of the changes based on the Board motions at prior meetings. Mr. West stated that the ordinance language was not in the packets but was sent to Board members via email attachment. He further stated that he had concerns about his understanding of the Board's votes and what was drafted as a result, and that he wanted to be sure what he had voted for, compared to what he thought he was voting for. He stated that the revised ordinance language did not appear to reflect what the Board had voted on, and that this was a relatively simple task that had become very complex. Ms. Hanlon noted that the main issue being contested was whether or not age was a factor in applying the criteria for a retiree to return to work. Mr. West stated that he understood that members currently in a return-to-work status would be grandfathered in from the new changes, but for everyone else, there would be a 6-month waiting period, one year maximum return to work period, and 25 percent limit on wages. His understanding was that these criteria applied to all members, and that applying different rules based on age would greatly complicate the document and the application of it by the staff. Mr. West also expressed a concern about all the exceptions relative to the limit of one year return to work period, which he remembered as being passed with no exceptions. Ms. Hanlon stated that it was always her goal to do only enough to bring the System into IRS compliance, and that at age 59 ½ there are no compliance issues, and she never felt it was the function of the Board to interject itself into employer issues, and that ultimately it would be the decision of the Metro Council to make Retirement Ordinance changes. She stated that the Board could re-vote on the issues in question, as reflected in Mr. Yates' synopsis. Mr. West expressed concern about members leaving early in order to make combined wages and pension of 170 percent of what they were making as an active employee. Mr. Daniels stated his understanding of the motions the Board had passed, which included a 6-month waiting period, a limit of 25 percent of final wages, a 1-year limit when returning to work, and no differentiation between employees who were at least age 59 ½ and those who were not. He stated that he did not want to go back and address those motions again because as a Board, they had made a decision and it was important to make sure what is presented to the Council is what the Board agree to. Ms. Akers asked for a consensus regarding the items Mr. Yates' synopsis showed, in order for her to be clear in the amendments to the Retirement Ordinances. Discussion continued regarding age not being a factor, and what salary the 25 percent limit was based on (salary at time of retirement). Mr. Bernard asked about the quarterly reporting of salary information and who would be responsible. It was agreed that the department, or department head would have to provide the salary information, since the System has multiple employers, some of which are not affiliated with the City's Human Resources Department. Mr. John Williams asked which section of the ordinances would be affected by the items being clarified in Mr. Yates' synopsis, and Ms. Hanlon cited the specific sections. He noted that the Board was addressing specific provisions on a paper circulated among themselves, and that he needed to be able to explain to the Mayor the specifics in the ordinances. Mr. Yates explained that his purpose for drafting the synopsis was to highlight the differences in his interpretation and Ms. Akers', and to make certain that the provisions passed by the Board were what got included in the ordinance amendments. He went back to the July, 2021 meeting to extract the motions that were passed. Mr. Yates also noted that there was extensive Board discussion regarding exceptions to the 1-year return-to-work limitation.

Motion by Mr. West, seconded by Lt. Johnson to reaffirm the prior action of the Board which does not draw a distinction by age for return-to-work employees.

No discussion but with Ms. Hanlon objecting.

Motion passed by a majority of the Board.

Discussion continued regarding exceptions to the 1-year return-to-work, and Ms. Akers noted that each draft she had sent to the Board included exceptions for exceptional circumstances that would have to be approved by the Metro-Council. Mr. West stated that he was confused regarding this language, but acknowledged that the issue had been discussed. Mr. Bernard asked whether or not an item would have to be put on the Council agenda to extend the year-long return-to-work period. Ms. Akers stated that the Metro-Council would have to develop a list of exceptional circumstances, rather than voting on individual employees, as in the case of a hurricane or natural disaster. Mr. West questioned why someone would come back for an exceptional circumstance for only 10 hours per week, and stated that he hoped someone brought back to work for the City would be coming back full-time. He believed that when he voted, he was voting for no exceptions to the 1-year limit, but invited other Board members to chime in on this point. Mr.

Daniels stated that exceptions were discussed but he was not clear on whether the Metro-Council or the Mayor, or both would develop the list of exceptions. Mr. Bernard's concern was that a process was in place so everyone clearly knew how it would work. He stated that the specific parties that could approve exceptional circumstances should be named in the language so that there was no confusion. Mr. Bernard also asked what would happen if the exceptional circumstances extended past a 1-year period.

Motion by Mr. West, seconded by Lt. Johnson to reaffirm that return-to-work retirees on a part-time basis be limited to a 1-year period subject to an extension for extraordinary circumstances as approved by the Mayor, the Metro-Council, or the head of the applicable outside agency, whichever is the appointing authority.

No discussion but with Ms. Hanlon objecting.

Motion passed by a majority of the Board.

Discussion then shifted to point 5 on the synopsis relating to the grandfathering in of members who had made life decisions based on the current rules, and with the ordinance changes being made prospectively, they would not be harmed, but allowed to phase out based on the new ordinance language. Mr. Yates stated that the prospective nature of the ordinance changes would allow members to carry out what they were allowed to do under the DROP contracts, including those who anticipated getting a DROP distribution following violation of the DROP contract on their part. Such distributions might not be viewed favorably in the eyes of the IRS, but had been contractually agreed to under the DROP contract. These situations will fade out over time and no new allowances will be permitted. Ms. Hanlon added that for future DROP participants in this situation, the DROP funds will remain on deposit until the member terminates employment or attains the age of 59 ½. Ms. Akers stated that the fix to treat everyone equally for part-time return-to-work retirees, whether below or above the age of 59 ½ would be easy, and would entail eliminating a paragraph. She then noted the reasons for the long timeframe in making the changes, and that she basically got guidance only once a month, while still having to submit the language to the actuary and two attorneys in between Board meetings. Still to be done is the submission of the changes to the Parish Attorney's Office and the Mayor's Office, and to speed the process up, she requested a representative group of Board members and staff to review any subsequent changes. Ms. Hanlon stated that she needed to see the language that would institute the employer contributions for members entering DROP, and deferred to Ms. Linda Hunt for the Finance Department's perspective. Ms. Hunt stated that in order to stabilize the payroll base, they were recommending that when an employee enters DROP on or after January 1, 2022, the employee would cease contributing to CPERS and the employer would continue employer contributions. The reason for this change is because DROP participants fluctuate among different departments which creates an unstable payroll base and causes budgets to fluctuate, especially for smaller departments. This would also serve to lower the employer contribution rate as it is spread over a larger number of members in various departments. Within a 5-year period, all DROP employees would have their payroll included in the budget for employer contributions. Preferably these new provisions would be effective with the first payroll in 2022. Ms. Hunt stated that she had spoken to the System's actuary and she did not see the change as material enough to adjust the rate for 2022, but it would be part of the mix in the 2023 employer contribution calculation. Ms. Hanlon also brought up the idea of cleaning up old language that no longer served a purpose. Discussion continued regarding which members in particular would be impacted by the new language relative to employer DROP contributions. Mr. Daniels suggested that Ms. Akers circulate the proposed ordinance language to all Board members. It was noted that the agenda deadline to submit the proposed ordinances to the Metro Council would be November 18th, which is the same date as the next Retirement Board meeting. It was agreed that all Board members would receive the revisions, but Ms. Akers would move forward with them after receiving the comments from Ms. Hanlon, Mr. Yates, and Mr. West. Ms. Akers confirmed that the entire Retirement Ordinances, with revisions, would be submitted to the Council Administrator's Office. Ms. Hunt stated that it was a requirement to submit the document with strike-through and underlines so that new and deleted language could be differentiated. Mr. Yates requested that his synopsis also be included as a guideline.

The chairman then moved to Item 6, Committee Reports, and noted there were no reports for consideration.

Moving to Item 7, Staff Reports, the chairman noted that under Item 7B there was an invoice from the law offices of Klausner and Kaufman and recognized Mr. Yates who stated that this invoice represented charges for circulating the Retirement Administrator job opening to clients and pension plans he dealt with.

Motion by Mr. West, seconded by Mr. Daniels to approve payment for the charges to the law office of Klausner and Kaufman as presented.

No discussion and no objections.

Motion passed by those members present.

Under 7C, there were invoices from the Law Office of Akers & Wisbar, and the chairman called for a motion.

Motion by Mr. Bernard, seconded by Mr. Daniels to approve payment for the charges to the law firm of Akers & Wisbar as presented.

No discussion and no objections.

Motion passed by those members present.

Under Item 7D there was an invoice from the Law Office of Tarcza & Associates, and the chairman called for a motion.

Motion by Mr. West, seconded by Mr. Daniels to approve payment for the charges to the law firm of Tarcza & Associates as presented.

No discussion and no objections.

Motion passed by those members present.

Under 7F, there were a number of investment manager/consultant invoices for the Board's review.

Under 7G, Cash Activity Report, Mr. Drago presented the cash flow report and the budget comparison report and stated that these reports were for the Board's information.

The chairman then moved to Item 8, Unfinished Business, and under Item 8A, Discussion and Consideration of Retirement Ordinance Language Relative to Plan Tax Qualification Requirements, she stated that this item had been covered under Ms. Akers' Legal Update.

The chairman then moved to Item 8B, discussion of Retirement Ordinance Language Amendment Regarding Age Penalty, and noted that this item would be deferred until the next meeting.

Moving to Item 9, New Business, the chairman introduced Item 9A, Discussion and Consideration of Alternate Plan(s) to fill the Position of Retirement Administrator, and recognized Mr. West for his comments. Mr. West stated that it appeared evident that the Board would be hiring a very qualified candidate, and that the pay range would be increased to 2340 by the Council and then again to 2360 by the budget process. He made it clear that he did not oppose the decision of the Board, but he recommended having a backup plan in case something does not go as planned. He expressed concern that there was so little time to set a new administrator in place prior to Mr. Yates' departure. He had also heard that Mr. Yates had made the comment that the existing staff was not up to the task of stepping into his role. He asked Mr. Yates if Mr. Drago was able to step into his role as Retirement Administrator. Mr. Yates responded that he had never made that statement, and that he had stated that Mr. Drago was not willing to step outside of the classified service without some type of safety net. He stated that Mr. Drago was able to step into the administrator's role, and that his plan would have given both Mr. Drago and Mr. Williams greater responsibility and greater pay. Mr. West stated that his backup plan, should the chosen candidate for administrator turn down the offer of employment, was for Mr. Drago to assume an interim administrator position, and Mr. West hoped the Board would be willing to offer the same deal as they have offered administrators in the past, in which for one year he could slip back into a classified position should something go wrong. He asked if the Board members agreed with this plan as a backup plan. He also mentioned the possibility of AndCo stepping in with enhanced services for the investment-related duties. He noted that time ran out for the Board to advertise the job position as they intended, such as in Pension & Investment magazine. He believed that a more exhaustive search might produce even more qualified candidates. He stated that he was proposing to have a backup plan to offer Mr. Drago an interim appointment as Retirement Administrator with a guarantee as other directors have. Mr. Bernard asked when Mr. James Mack was anticipated to begin employment at CPERS, with Ms. Akers stating that the Council action would solidify the job offer, and then he would need to give a 2-week notice. Mr. Bernard also stated that he took a leave of absence, which was in accordance with the City-Parish rules that allow a leave of absence from a classified job for one year at a time. Ms. Hanlon noted that this can be difficult for smaller staffs such as CPERS. It was noted that should Mr. Mack not accept the job offer, the Board could make arrangements at the November Board meeting to initiate an alternate plan with Mr. Drago serving as interim administrator, and possibly calling on AndCo to step up their involvement in the investment duties.

Under Item 10, Administrative Matters there were no items to address.

The chairman then continued with Item 11, Police Guarantee Trust Matters, and under Item 11A, PGT Benefits Report, recognized Mr. Yates who stated that there were three items on this month's report.

Motion by Mr. West, seconded by Mr. Bernard to approve the PGT Benefits Report as presented.

No discussion and no objections.

Motion passed by those members present.

Under Item 11B, the chairman noted that the PGT DROP Notifications Report was provided for the Board's information, and that no action was required.

Under Item 11C, Consultants' Reports, there were no items to address.

There were no investment manager invoices under Item 11D.1 for the Board's review.

Under Item 11D.2, PGT Cash Activity Report, Mr. Drago presented the cash activity report and the budget comparison report.

Under Item 11E, there were no matters for consideration.

Under Items 11F Unfinished Business, and 11G, there were no matters to address.

Ms. Akers then requested a motion for executive session needed to discuss legal matters pertaining to pending litigation.

Prior to the executive session, Mr. Bernard asked about the penalties for early withdrawals or for members retiring under a certain age. Mr. Yates explained the rules governing the 72(t) penalties and how CPERS provided a means for the members to protect themselves from this 10 percent penalty.

Motion by Ms. Hanlon, seconded by Mr. West to go into executive session at 11:17 a.m.

No discussion and no objections.

Motion passed by those members present.

Regular session resumed at 11:21 a.m., and the chairman called for a motion.

Motion by Lt. Johnson, seconded by Mr. West to authorize legal counsel and securities counsel to appeal the court's decision in the Macrogenics litigation.

No discussion and no objections.

Motion passed by those members present.

There was a brief discussion about the 2022 DROP interest rate, but Mr. Yates noted that AndCo had not yet received the final investment performance numbers from some of the investment managers.

Motion by Mr. West, seconded by Mr. Daniels to adjourn the meeting at 11:23 a.m.

No discussion and no objections.

Motion passed by those members present.

MARSHA HANLON
CHAIRMAN, RETIREMENT BOARD OF TRUSTEES

JEFFREY R. YATES
RETIREMENT ADMINISTRATOR